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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/507,509	02/18/2000	Jay S. Walker	17200-082	8064

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EXAMINER	
RIMELL, SAMUEL G	

ART UNIT	PAPER NUMBER
2164	

DATE MAILED: 11/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/507,509	WALKER ET AL.	
	Examiner	Art Unit	
	Sam Rimell	2164	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 98-108,110,111 and 138-148 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 98-108, 110, 111, 138-148 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SAM RIMELL
PRIMARY EXAMINER

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 98-108, 110, 111 and 138-148 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spallone et al. ('686) in view of Bezos ('399).

Claim 98: Spallone et al. discloses a shopping order system having a server (200) which includes a storage device for storing programs (col. 3 lines 62-65). Processors (220, 230) are connected to the server (220) via a communications network. The processors (220,230) receive conditional purchase offers from customers (FIGS 3B-3F—customer makes offers for food purchase and both knows and controls the price of offer (col. 7, lines 31-38)). The purchase offers are compared with seller inventory (FIG. 5). As seen in the far right column in FIG. 5 a determination is made as to whether the conditional purchase for the particular item is acceptable or unacceptable. If the purchase is unacceptable (by reason that the item is out of stock) then the rejection is formulated and transmitted to the user (col. 7, lines 6-8). The notation within the inventory database (FIG.5) that the item is out of stock prevents the customer from any orders on that particular item. This, in turn, limits any additional purchase offers being indicated by the customer no matter what the price is.

Spallone et al. differs from the claims in that it does not disclose the receipt of payment identifiers from the customer.

However, Bezos teaches a system that can be used in an environment where a merchant receives an order from a customer. In addition to the order, the customer can provide a payment identifier (lines 12-15 of abstract) that links the merchant to a customer credit card or debit card (col. 3, lines 7-10).

It would have been obvious to one of ordinary skill in the art to modify Spallone et al. to include the transmission of a payment identifier to the merchant to assist in the secure payment of the items being ordered, as taught by Bezos.

Claim 99: Col. 5, line 65 through col. 6, line 3 indicate that each conditional purchase offer has an expiration time. In Spallone et al., the expiration time is a period of thirty seconds without entering a command, at which point, the purchase offer is abandoned. Therefore, the expiration date is the same date as the offer, at time when thirty seconds have elapsed without entering data from the point of initiation.

Claim 100: The prices for the items in FIG. 5 are seller defined rules.

Claim 101: The customer uses a series of webpages (FIGS. 3A-3G). The program which permits the viewing of these pages is thus a web browser.

Claim 102: FIGS. 3A-3G form part of an electronic form. The user selects data to fill out the form. The data is summarized on a summary page in FIG. 3E that is blank until it receives data.

Claims 103-104: Bezos teaches that a customer submits identifiers indicative of a credit card account. The submission of data identifiers indicative of a debit account would also have been known in the art and would have been obvious to one of ordinary skill in the art to submit in order to permit direct cash account withdrawal.

Claim 105: In Bezos, the user submits the credit card to a database in advance of selecting the credit card and making the payment with the credit card. This is considered a pre-authorization for payments.

Claim 106: In Spallone et al., the user purchases food in particular, but the purchase of other items such as hardware would have been obvious to one of ordinary skill in the art as an obvious choice of available goods for purchase.

Claim 107: In FIG. 3E, the user authenticates the offer by indicating whether or not the offer is complete, or needs more items.

Claim 108: Bezos teaches the submission and processing of a credit card.

Claim 110: Col. 5, line 65 through col. 6, line 3 state that a customer has a predefined time limit associated with the offer. The customer is limited from submitting the offer if a period of 30 seconds elapses without entering data during the offer process.

Claim 111: The processor accesses a computer reservation system (database of FIG. 5).

Claim 138: See remarks for claim 98.

Claim 139: See remarks for claim 100.

Claim 140: See remarks for claim 101.

Claim 142-143: See remarks for claim 103-104.

Claim 144: A complete processing of a credit card guarantees payment to the vendor of the goods.

Claim 145: See remarks for claim 107.

Claim 146: See remarks for claim 106.

Claim 147: See remarks for claim 111.

Claim 148: See remarks for claim 98. Changing an "offer price from a customer" as recited in claim 98 to "a customer defined offer price from a customer" in this claim is essentially saying the same thing. An offer price from a customer is inherently customer defined, so this particular amendment does not appear to change the scope of the claim. Claim 148 has also been amended over claim 98 to define the limiting of additional conditional purchase offers " based on an unacceptable purchase offer". This reads on purchase offers declined by the seller when the item is out of stock (col. 7, lines 6-8 of Spallone et al). If a first customer is refused an opportunity to buy a product when it is out of stock, additional offers for the same item will be refused as well until the item is re-stocked.

Remarks

In response to the examiner's non-final office action of March 9, 2006, no amendments are presented. Only remarks are presented.

Statement pertaining to arguments: At page 14, in the last paragraph, applicant states:

"*While many other claim elements were not discussed, Applicant asserts that all such remaining and not discussed claim elements, all, also are distinguished over the prior art and reserves the opportunity to more particularly remark and distinguish such remaining claim elements at a later time should it become necessary.*"

Examiner does not agree with or consent to the assertions in this paragraph. If applicant does not present evidence, argument or amendment to address features in a rejected claim, then the record shall reflect that those features are unpatentable and are not distinguished from the prior art. The MPEP does not provide the applicant with any "reserved right" to withhold

arguments or amendments, only to present them in the future. If applicant does not present argument or amendment to address specific claimed features, then the record shall reflect the unpatentability of those features, for lack of evidence to the contrary.

Applicant has presented arguments directed to the analysis of the term "conditional purchase offer". In the previous action, the examiner set forth three rationales for why the system of Spallone et al. described a conditional purchase offer, and applicant's arguments attempt to rebut these three rationales.

(1) In Spallone et al., the customer is bound to the offer, as evidenced by FIGS. 3F and 3G. Applicant argues that the customer in the Spallone system could simply walk away without being held accountable. However, this argument is not correct. Spallone et al. does not describe the customer as walking away. Additionally, it is mere speculation to assume that the customer would walk away from an order placed directly by that same customer. The reference does not indicate such action by the customer, and such speculation is outside the scope of the reference teachings.

(2) In Spallone et al., the conditional offer is conditional upon refusal by the seller, such as when the seller is out of stock of a requested item. Applicant argues that in applicant's own disclosed invention, the refusal by the seller is based on price considerations in addition to inventory considerations. However, in Spallone et al., each item of inventory has a price, so the analysis of the inventory involves an analysis of priced items. It is important to note that the claims do not state how the prices are analyzed, or what the "pricing information" actually is. Accordingly, analysis of an inventory of priced items meets the requirements for a comparison between an order and both inventory and price information.

(3) In Spallone et al., the customer dictates price by controlling the quantity and product type of an order (FIGS. 3C-3E). In other words, the more the customer orders, the higher the cumulative price charged (col. 7, lines 36-37). Applicant argues that the system of Spallone is restrictive, since it prohibits two different customers from paying different prices for the same item. However, such restriction is exactly what the claims (claim 98, for example) require. The last step of claim 98 is a restriction to deter customers from submitting offers at different prices. If, as applicant states, the system Spallone restricts customers from offering different prices for the same merchandise, then it only serves to further meet the claimed requirements for preventing customers from submitting offers with progressively higher prices. Spallone has an additional mechanism for restricting orders at any price, namely, a notation in the inventory database (FIG 5) which notes that an item is out of stock.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (571) 272-4084.

Sam Rimell
Primary Examiner
Art Unit 2164